

EDWARD H. KUBO, JR. (2499)
United States Attorney
DERRICK K. WATSON (CA Bar No. 154427)
Assistant United States Attorney
District of Hawaii
RONALD J. TENPAS
Assistant Attorney General
ANDREW A. SMITH (NM Bar #8341)
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
c/o U.S. Attorneys Office
P.O. Box 607
Albuquerque, New Mexico 87103
Telephone: (505) 224-1468
Facsimile: (505) 346-7205
E-mail: andrew.smith@usdoj.gov
Attorneys for Federal Defendants
U.S. DEPARTMENT OF ENERGY
and NATIONAL SCIENCE FOUNDATION

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

LUIS SANCHO and) Civil No. 08-00136-HG-KSC
WALTER L. WAGNER,)
Plaintiffs,)
v.)
UNITED STATES DEPARTMENT)
OF ENERGY, *et al.*,)
Defendants.)

)

) **SUPPLEMENTAL DECLARATION OF**
)

) **DERRICK K. WATSON IN SUPPORT**
)

) **OF FEDERAL DEFENDANTS' EX**
)

) **PARTE APPLICATION TO STRIKE**
)

) **PLAINTIFFS' UNTIMELY**
)

) **RESPONSES TO FEDERAL**
)

) **DEFENDANTS' MOTION TO DISMISS**
)

) **OR, IN THE ALTERNATIVE, FOR AN**
)

) **OPPORTUNITY TO REPLY**
)

I, Derrick K. Watson, declare that:

1. I am an Assistant United States Attorney for the District of Hawaii, and am counsel for the Federal Defendants in the above-entitled action. I have personal knowledge of the facts set out herein, and I am authorized to make this declaration.

2. I spoke with Plaintiff Walter Wagner by telephone on August 27, 2008, and advised Mr. Wagner of the filing of Federal Defendants' *Ex Parte* Application to Strike Plaintiffs' Untimely Responses to Federal Defendants' Motion to Dismiss or, in the Alternative, for an Opportunity to Reply, which we served on Plaintiffs by email and United States mail on August 27, 2008. Mr. Wagner advised me that he was already aware of this filing and had received the email service copy and in fact, had already mailed an opposition to the *ex parte* application which he expected to arrive to the Court on August 28, 2008. At my request, Mr. Wagner promised to email me a copy of Plaintiff's Opposition this afternoon, but as of 5:30 p.m. that email has not arrived.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 27, 2008 at Honolulu, Hawaii.

/s/ Derrick K. Watson

DERRICK K. WATSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 27, 2008, true and correct copies of the foregoing were served on the following individuals by United States mail, first class postage prepaid:

LUIS SANCHO
P.O. Box 411
Honomu, Hawaii 96728

WALTER L. WAGNER
P.O. Box 881
Pepeekeo, Hawaii 96783

MARTIN S. KAUFMAN
Atlantic Legal Foundation
2039 Palmer Avenue
Larchmont, New York 10538

and by the Court's ECF System on:

ROBERT M. KOHN
Price Okamoto Himeno & Lum
rkohn@pohlhawaii.com

and by email on:

WALTER L. WAGNER
lhcdefense@hotmail.com
mbbg2005@hotmail.com

/s/ Derrick K. Watson

DERRICK K. WATSON
Assistant U.S. Attorney